UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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KEYSHAWN FRANÇOIS, COURTNEY SIMON,
VINCENT PHINIZY, and MARCUS CREER

14-CV-8391 (JMF)

Plaintiffs,

SECOND AMENDED COMPLAINT

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, and NEW YORK CITY POLICE OFFICERS: P.O. EDWIN ESPINAL SERGEANT RYAN GILLIS, P.O. ERIC HEALY, and LIEUTENANT JEREMY SCHEUBLIN, in Their Official Capacities and Individually,

Defendants.
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Plaintiffs, KEYSHAWN FRANCOIS, COURTNEY SIMON, VINCENT PHINIZY, MARCUS CREER, AND CHRISTIAN MCKNIGHT, by their attorney, DANIEL CRUPAIN, complaining of the Defendants, upon information and belief, respectfully allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of their civil rights, secured by the said statutes and the Constitutions of the State of New York and of the United States.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367.

VENUE

3. Venue is properly laid in the Southern District of New York under 28 U.S.C. § 1391(b), as the District in which the claims arose.

JURY DEMAND

4. Plaintiffs respectfully demand a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

5. The Plaintiffs, except for Plaintiff, VINCENT PHINIZY who was a resident of the State of Massachusetts, at all relevant times were residents of the City and State of New York.

6. Defendant, THE CITY OF NEW YORK, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and maintains the New York City Police Department, a duly authorized Public Authority and Police Department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, THE CITY OF NEW YORK.

7. At all times hereinafter mentioned, the individually named defendants: P.O. EDWIN ESPINAL, SERGEANT RYAN GILLIS, P.O. ERIC HEALY, and LIEUTENANT JEREMY SCHEUBLIN were duly sworn police officers of the New York City Police Department and were acting under the supervision of the said department and in accordance with their official duties, and individually.

8. At all times hereinafter mentioned, all of the Defendants, either personally, individually or through their employees, were acting under color of state law and in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State of

New York and the City of New York.

9. Each of the alleged acts of the said Defendant police officers of the New York City Police Department were done by said Defendants while acting within the scope of their employment by Defendant, THE CITY OF NEW YORK and while acting in furtherance of their employment by Defendant, THE CITY OF NEW YORK,

10. All of the Defendant police officers are being charged and sued herein in both their individual and official capacities.

FACTS

Date, Time, and Location:

11. On or about April 10, 2014 at about 9:28 PM and thereafter, each of the plaintiffs was on a public sidewalk in the County of the Bronx, on the south side of St. Raymonds Avenue between Odell Street and Olmstead Avenue.

Plaintiff Keyshawn Francois:

12. Plaintiff, Keyshawn Francois, a high school student, aged 17, who lived one (1) block from the aforesaid location was waiting on the said street to walk home with his brother Plaintiff, Courtney Simon, and was not engaged in any illegal activity, nor was he in possession custody or control of any weapon or any other illegal material.

Plaintiff Courtney Simon:

13. Plaintiff, Courtney Simon, who lived one block from the aforesaid location in the same household as his brother Plaintiff, Keyshawn Francois, was talking to persons on the Street and was not engaged in any illegal activity, nor was he in possession, custody or control of a weapon or any other illegal material.

Plaintiffs, Vincent Phinizy and Marcus Creer:

14. Plaintiffs: Vincent Phinizy and Marcus Creer, were lawfully present on the public Street at the aforesaid location and were not engaged in any illegal activity nor were they in possession, custody or control of a weapon or any other illegal matter or material.

15. Plaintiffs were and are separate individuals of differing ages: Keyshawn François was 17 and a high school student in the Bronx; Plaintiff Phinizy lived in Bedford, Massachusetts and was 28 years of age, as was Marcus Creer, who was a Bronx resident; Courtney Simon, was a Bronx resident in his early 20s. All of the aforesaid plaintiffs are African American.

16. All of the plaintiffs were lawfully on the street, not engaged in criminal activity, not in possession or custody or control of any weapon or other illegal instrumentality, material or substance.

The Following Acts of Defendants were Learned from the Defendants during Discovery:

17. At the aforesaid date and approximate time, officers of the New York City Police Department arrived at the aforesaid location, and proceeded to stop the plaintiffs, search them, handcuff them, and put them on the ground on the sidewalk. Participating in the aforesaid were defendant Police officers P.O. EDWIN ESPINAL, SERGEANT RYAN GILLIS, and defendant, P.O. ERIC HEALY.

Defendant LIEUTENANT JEREMY SCHEUBLIN:

18. Defendant LIEUTENANT JEREMY SCHEUBLIN, the ranking police officer arrived at the aforesaid location shortly after the plaintiffs were handcuffed and placed on the sidewalk, and proceeded to make observations of the scene, and confer with supervisory New York City Police Officer Sergeant RYAN GILLIS and police Officer EDWIN ESPINAL, and in conjunction with said officers made the decision and authorized the decision to take all of the

plaintiffs, and others who were handcuffed and on the sidewalk, to the 43rd precinct to further detain the plaintiffs and charge them all with the possession of the 2 guns allegedly found on the street, process their arrests, create arrest records charging them with possessing dangerous weapons, despite the fact that the plaintiffs did not possess and were not in any custody or control of any weapons or anything else that was illegal and had not committed any crimes, nor had committed any crimes in the presence of any of the police officers.

Defendant Sergeant RYAN GILLIS:

19. At about the aforesaid time and date, Defendant, Sergeant RYAN GILLIS arrived at the aforesaid location with Defendant officer EDWIN ESPINAL. Defendant, Sergeant RYAN GILLIS stopped plaintiff Marcus Creer at gunpoint, and put him on the ground. Defendant, Sergeant RYAN GILLIS called for backup which brought other New York City Police officers to the aforesaid location.

20. Defendant, Sergeant RYAN GILLIS then pointed his gun at other individuals on the street, which included the plaintiffs, and ordered them not to move. Defendant, Sergeant RYAN GILLIS directed officers from the New York City Police Department to detain, and restrain all of the individuals who were present on the said sidewalk, including the plaintiffs.

Defendants, Police Officer EDWIN ESPINAL and Police Officer ERIC HEALY:

21. Defendant, Police Officer EDWIN ESPINAL arrived at the aforesaid location at the aforesaid date and approximate time, and arrested a person, who is not a plaintiff in this action, who was isolated and separated from the vicinity of the other people present on the street, including plaintiffs herein, for possession of one of the weapons allegedly found on the street.

22. Defendant officer P.O. ERIC HEALY arrived the aforesaid location at the aforesaid date and approximate time, and guarded plaintiff, Marcus Creer, who was held on the said

sidewalk until he was moved into a police truck that brought him and the other plaintiffs to the 43rd precinct in the County of the Bronx.

23. The police officers who did not actively participate in the unlawful arrests of a particular plaintiff, were aware that their fellow officers lacked probable cause for the arrest and imprisonment of all of the plaintiffs, yet failed to take reasonable steps to intervene in the other defendant police officers' willful violation of plaintiffs' constitutional rights. At no time did any of the defendant officers, take any steps to intervene or prevent, or otherwise limit the illegal, unlawful and unconstitutional conduct engaged in by their fellow officers against the Plaintiffs.

24. The handcuffed Plaintiffs were placed in the aforesaid police truck with other African-American males taken from the said sidewalk, and were transported to the 43rd precinct of the New York Police Department, where they were put into cells and further imprisoned, and thereafter transported as prisoners to another location and put into other cells, in an area known as Central Booking, in the County of Bronx, where they were further imprisoned.

25. Plaintiffs were all charged by the defendant police officers with possession of the 2 weapons which were allegedly found on the ground on the street at locations where plaintiffs could not have exercised custody and control over said weapons, and did not exercise custody and control over said weapons.

26. At the 43rd precinct in the County of the Bronx, all of the plaintiffs were fingerprinted, had their pictures taken, were held in cells, had their cell phones taken, and had arrest records created by the police officers of the New York City Police Department.

27. At the 43rd precinct, Arrest Reports and arrest records were prepared by Defendant officer PO ERIC HEALY, as the arresting officer for plaintiffs, KEYSHAWN FRANCOIS and COURTNEY SIMON, and by Defendant officer PO EDWIN ESPINAL as the arresting officer for

plaintiffs: VINCENT PHINIZY, and MARCUS CREER; all of the aforesaid Arrest Reports were reviewed and approved by supervisory officer, Defendant, Sergeant RYAN GILLIS, which reports falsely charged each plaintiff with possession of 2 dangerous weapons. On information and belief, the Plaintiffs' Arrest Reports, and Plaintiffs' arrest records, will remain in Plaintiffs' records for the rest of their lives. Although the records are said to be "sealed", on information and belief, they will remain subject to being unsealed by potential employers such as law enforcement agencies, child care agencies, hospitals, schools, school bus driver employers, and others and by agencies such as the City of New York should any of them be falsely arrested again.

28. Defendant, Officer ERIC HEALY and Defendant Officer EDWIN ESPINAL, with the approval of Defendant Sergeant RYAN GILLIS, made and created false and misleading police reports accusing plaintiffs of possessing 2 dangerous weapons when the plaintiffs did not possess any of the weapons of which they were accused of possessing, and filed, forwarded these reports to prosecutors in the Bronx County District Attorney's office.

29. At no time did any of the defendants have probable cause to seize, detain or arrest any of the Plaintiffs, nor was it reasonable for the defendants to believe that such cause existed.

30. The District attorney of Bronx County did not prosecute any of the plaintiffs for possession of any weapons or for any other crime; such that after a period of unlawful detention the plaintiffs were released, without being brought before any court.

The Relationship of the following Allegation to this Case was learned from the *Discovery Obtained from Defendants in providing a Photo Array:*

31. In the months following the arrest in this case of Plaintiff, KEYSHAWN FRANCOIS, Defendant, Police Officer EDWIN ESPINAL, acting in his capacity and authority as a New York City Police officer, and in his individual capacity, repeatedly stopped said plaintiff in

the streets of the neighborhood where he lived, which was also the neighborhood of the aforesaid arrest and imprisonment, and unlawfully detained, questioned and searched him.

32. As a result of the foregoing, all of the Plaintiffs sustained, *inter alia*, loss of liberty, fear, emotional distress, mental anguish and humiliation, injury, and the deprivation of their constitutional rights.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

33. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in paragraphs numbered “1" through 32" with the same force and effect as if fully set forth herein.

34. All of the aforementioned acts of the Individual Defendants, their agents, servants and employees were carried out under color of law.

35. The acts complained of were carried out by the aforementioned individual defendants in their individual capacity and in their capacities as New York City police officers, with all the actual and apparent authority attendant thereto.

36. All of the aforementioned acts deprived Plaintiffs of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

37. The acts complained of were carried out by the aforementioned individual New York City Police officer defendants in their capacities as police officers of the New York City Police Department pursuant to the customs, usages, practices, procedures, of the New York City Police Department and rules of THE CITY OF NEW YORK.

38. As a result of the foregoing, Plaintiffs sustained, *inter alia*, loss of liberty,

emotional distress, mental anguish, shock, fright, apprehension, injury, embarrassment and humiliation, and deprivation of their constitutional rights.

SECOND CLAIM FOR RELIEF
FALSE ARREST UNDER 42 U.S.C. § 1983

39. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1" through “38" with the same force and effect as if fully set forth herein.

40**.** As a result of the defendants’ aforementioned conduct, plaintiffs were subjected to illegal and improper false arrests and unlawful seizures by the defendants, taken into custody falsely imprisoned, detained, confined, and incarcerated without probable cause, privilege or consent.

41. As a result of the foregoing, the Plaintiffs' liberty was restricted for an extended period of time, and they were put in fear for their safety, humiliated and subjected to handcuffing, and other physical restraints, without probable cause, and deprived of their constitutional rights and suffered, loss of liberty, emotional distress, mental anguish, shock, fright, apprehension, injury, embarrassment, humiliation, and deprivation of their constitutional rights.

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THIRD CLAIM FOR RELIEF
FAILURE TO INTERVENE UNDER 42 U.S.C. § 1983

42. Plaintiffs repeat and reallege each and every allegation contained in paragraphs “1" through “41" as if fully set forth herein at length.

43. Defendant police officers of the New York City Police Department had an affirmative duty to intervene to protect the constitutional rights of the Plaintiffs herein from being violated by the other officers in their presence.

44. At no time did the defendants have probable cause, legal justification, or any legal basis for seizing, searching, arresting, detaining and imprisoning Plaintiffs

45. Said officers had reason to know that the Plaintiffs' constitutional rights were being violated in their presence and had a realistic opportunity to intervene to prevent same from occurring, but failed to do so.

46. As a result of the foregoing, Plaintiffs sustained *inter alia*, loss of liberty, emotional distress, fear anguish, humiliation and the deprivation of their constitutional rights.

FOURTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY UNDER MONEL ARISING FROM
UNCONSTITUTIONAL POLICIES AND CUSTOMS UNDER 42 U.S.C. 1983

47. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "46" as if the same were fully set forth at length herein.

48. Defendant, THE CITY OF NEW YORK'S individual New York City Police Officers arrested and incarcerated Plaintiffs in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize plaintiff's liberty, well-being, safety and constitutional rights.

49. The acts complained of were carried out by the aforesaid individual Defendants in their capacities as New York City police officers and officials, with all the actual and/or apparent authority attendant thereto.

50. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of THE CITY OF NEW YORK and the New York City Police Department, all under the supervision of ranking officers of said department.

51. The aforementioned customs, policies, usages, practices, procedures and rules of

THE CITY OF NEW YORK and the New York City Police Department include, but are not limited to, the following unconstitutional practices: arresting individuals regardless of probable cause in order to inflate the officer's arrest statistics; arresting innocent persons notwithstanding the existence of credible evidence which exonerates the accused of any criminal wrongdoing

52. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department constituted a deliberate indifference to the safety, well-being and constitutional rights of Plaintiffs.

53. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by Plaintiffs as alleged herein.

54. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department were the moving force behind the constitutional violations suffered by Plaintiffs as alleged herein.

55. As a result of the foregoing customs, policies, usages, practices, procedures and Rules of THE CITY OF NEW YORK and the New York City Police Department, Plaintiffs were incarcerated unlawfully.

56. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of Plaintiffs.

57. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of Plaintiffs' constitutional rights.

58. All of the foregoing acts by Defendants deprived Plaintiffs of federally protected

rights, including, but not limited to, the right: a) not to be deprived of liberty without due process of law; b) to be free from seizure and arrest not based upon probable cause; c) to be free from unwarranted and malicious criminal prosecution; d) not to have cruel and unusual punishment imposed upon them; and e) to receive equal protection under the law.

As a result of all the foregoing, Plaintiffs, KEYSHAWN FRANCOIS, COURTNEY SIMON, VINCENT PHINIZY, and MARCUS CREER, are each entitled to compensatory damages in the sum of ten million dollars ($10,000,000.00) and further entitled to punitive damages against the individual defendants in the sum of ten million dollars ($10,000,000.00).

WHEREFORE, Plaintiffs KEYSHAWN FRANÇOIS, COURTNEY SIMON, VINCENT PHINIZY, and MARCUS CREER, each demand judgment against the Defendants in the sum of ten million dollars ($10,000,000.00) in compensatory damages, and ten million dollars ($10,000,000.00) in punitive damages, plus attorney's fees, and the costs and disbursements of this action.

Dated: New York, New York
April 21, 2016

BY /s/

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